

vensby, et al. vs. City of Cincinnati
November 6, 2003

BRIAN ANTHONY BRAZILE

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
:
Plaintiffs, :
vs. : Case No. 01-CV-769
: (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
:
Defendants. :

Videotaped deposition of BRIAN ANTHONY

BRAZILE, a witness herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Thursday, November 6, 2003, at 11:02 a.m.

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1 APPEARANCES:	Page 2	1 notes may then be transcribed out of the presence of	
2 On behalf of the Plaintiffs:		2 the witness; and that proof of the official	
3 Paul B. Martins, Esq. Don Stiens, Esq. 5 Helmer, Martins & Morgan Co., L.P.A. Suite 1900, Fourth & Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400		3 character and qualifications of the notary is	
4 expressly waived.		4	
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1 APPEARANCES (Continued):	Page 3	Page 5
2 On behalf of Brian Anthony Brazile and the 3 Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spilien and Darren Sellers:		1 VIDEOGRAPHER: The time is 11:02 a.m. The
4 Donald E. Hardin, Esq. 5 Hardin, Leffon, Lazarus & Marks, LLC 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300		2 date is November the 6th. The year is 2003.
7 Also present: 8 Richard W. Grubb, Videographer 9 Lisa Damstrom, Law Clerk 10 Helmer, Martins & Morgan Co., L.P.A.		3 Would you please swear the witness, ma'am.
11 Mr. Roger Owensby 12 Mrs. Brenda Owensby 13 Mr. Shawn Owensby		4 BRIAN ANTHONY BRAZILE
14		5 being by me first duly cautioned and sworn, deposes
15		6 and says as follows:
16 S T I P U L A T I O N S		7 VIDEOGRAPHER: We're on the record, Mr.
17		8 Martins. This is videotape number 1 for this
18 It is stipulated by and among counsel for the 19 respective parties that the deposition of BRIAN 20 ANTHONY BRAZILE, a witness herein, called by the 21 plaintiffs for cross-examination, pursuant to the 22 Federal Rules of Civil Procedure, may be taken at 23 this time by the notary; that said deposition may be 24 reduced to writing in stenotype by the notary, whose		9 deposition.
20		10 MR. MARTINS: Thank you.
21		11 CROSS-EXAMINATION
22		12 BY MR. MARTINS:
23		13 Q. Sir, would you state for the record your
24		14 full name, please.
25		15 A. My full name is Brian Anthony Brazile.
26		16 Q. And your date of birth?
27		17 A. Is 11/11/70.
28		18 Q. Have you ever had your deposition taken
29		19 before?
30		20 A. No, sir.
31		21 Q. Let me cover some ground rules with you.
32		22 As you have just observed, the court reporter places
33		23 you under oath. I will be asking you questions. If
34		24 I should ask you a question that either you don't

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1 A. It was sort of like fetal sort of 2 position. 3 Q. Did you say anything to Officer Heiland at 4 that time, after seeing Mr. Owensby with your 5 flashlight? 6 A. Yes. 7 Q. What did you say to Officer Heiland? 8 A. I walked around to the other side of the 9 vehicle. 10 Q. To the -- to the -- 11 A. To where they were. 12 Q. -- rear of the passenger's side of the 13 vehicle? 14 A. Where they were standing. 15 Q. Okay. 16 A. And I asked him, I said, "The guy you have 17 in your car, is he okay?" I said, "Can he breathe?" 18 I said, "He's in a" -- you know, position that 19 looked like he was in, it may have been hard, so I 20 asked him. I'm figuring he's their prisoner. No 21 one ever said whose he was. I figured he was 22 theirs, because he was in their car. 23 And basically I was just trying to let 24 them know to check on him, just to see what's going	1 Because they didn't actually go and check. 2 I figure if it was my vehicle and someone 3 told me that, you know, something may or possibly 4 could have been wrong, you know, I would probably 5 run right over and check and see what's going on. 6 But for some reason they didn't, so I took 7 it that probably they had already checked on him and 8 they knew what was -- you know, maybe he was fine, 9 maybe, I don't know, was overexaggerating maybe. 10 Q. In any event, they -- they took no action 11 in response to your question to them as far as "Can 12 he breathe," right? 13 A. No, sir. 14 Q. As I recall, your statement was something 15 along the lines of: this looks fucked up, can he 16 breathe, it don't look like he can from the way he's 17 laying. 18 A. Uh-huh. 19 Q. Is that accurate to your recollection? 20 A. Yes. 21 Q. And you saying, in response to that, 22 Officer Heiland and possibly the other officer 23 simply shrugged their shoulders? 24 A. Yes.
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1 on with him or did they know or had they checked. I 2 don't know. I just had arrived. 3 And basically when I told them, you know, 4 they basically just stood there and kind of like 5 shrugged their shoulders. 6 Q. Both of them? 7 A. From what I recall. 8 Q. Did they say -- 9 A. But I was mainly talking to -- to Rob. 10 Q. To -- to Heiland? 11 A. Correct. 12 Q. Did Officer Heiland or the other officer, 13 Officer Campbell, say anything to you in response? 14 A. No. No, sir. 15 Q. In your -- after you told them that -- 16 voiced your concern that you weren't sure that the 17 person could breathe, or "Can he breathe," I guess, 18 was your -- your question to them, and they shrugged 19 their shoulders, was the -- the shrug, did you take 20 that to mean, We don't know, or -- or how -- how did 21 you interpret the shrug of the shoulders? 22 A. Well, once I made the statement that I 23 made and, you know, he shrugged, kind of shrugged 24 his shoulders, I took it as everything was fine.	1 Q. What did you do then? 2 A. At that point in time I took it as I guess 3 everything was okay then. I went back to my vehicle 4 and proceeded to put my hat on. And like I say, 5 right after that, that's when supervisors and 6 everybody started showing up on -- onto the scene. 7 Q. Okay. So you walk back to your -- to the 8 scout car, get your hat out, put your hat on? 9 A. Uh-huh. 10 Q. Is Officer Jorg still around the area? 11 A. Somewhere, yes. 12 Q. Is Caton still around the area? 13 A. Everybody was still in the area, yes. 14 Q. Hunter's in the area? 15 A. Everyone. 16 Q. Hodge, Lawson are in the area, right? 17 A. Correct. 18 Q. Did you say to any of them, Hey, can that 19 guy breathe; it doesn't look like he's breathing in 20 the back of that Golf Manor car? Did you say 21 anything like that to them? 22 MR. HARDIN: Objection to the form of the 23 question. 24 A. Not to them.

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1 to why this person wasn't seated up and was not 2 seat-belted?	1 (Deposition Exhibit 47 was marked for identi- fication.)
3 A. No, I didn't. He was not in -- he was in 4 Golf Manor's custody and control. I don't know what 5 their policies are.	3 Q. Let me hand you, sir, what is marked as 4 Exhibit 47. If you would take a look at that and 5 just tell me whether or not that is a transcript of 6 a statement you gave to police Homicide detectives 7 on November 13th, 2000.
6 Q. Well, but just for the safety of the 7 person --	8 A. Yes, it is.
8 A. Uh-huh.	9 Q. And that's one of the statements that you 10 looked at in preparation for this deposition, 11 correct?
9 Q. -- did you raise these -- these issues?	12 A. Yes, it is.
10 A. No.	13 Q. I want to direct your attention to page 3. 14 About halfway down the page there's a question that 15 says, "What did you say?" Do you see that?
11 Q. I mean, these are -- these are safety 12 issues, right?	16 A. Yes.
13 MR. HARDIN: Objection.	17 Q. Okay. And then your answer is, "I told 18 'em it looked fucked up, you know."
14 Q. Regardless of -- regardless of whose car 15 they're in, the reason the person is sitting up as 16 opposed to laying down is, at least in part, that 17 they won't suffocate or have any asphyxia, correct?	19 Question: Which, which Golf Manor guy did 20 you say this to?
18 MR. HARDIN: Objection.	21 "Answer: Heiland. Cause I know Heiland."
19 You may answer.	22 MR. HARDIN: Excuse me a minute.
20 A. Okay.	23 THE WITNESS: That was never said.
21 Q. That's -- I mean, that's part of your 22 training, right?	24 MR. HARDIN: Just -- okay. Just go ahead
23 A. Yes.	
24 Q. Okay. And the same thing for a seat belt;	
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1 a person wears a seat belt for their safety, 2 correct?	1 and keep reading. Can you start over again so 2 the --
3 A. Correct.	3 Q. Question: What did you say?
4 MR. HARDIN: Objection.	4 "Answer: I told 'em it looked fucked up, 5 you know.
5 You may answer.	6 "Question: Which, which Golf Manor guy 7 did you say that too (sic)?
6 Q. And so what I'm asking is, when you saw 7 this person laying down, not seat-belted, in the 8 back seat of the cruiser, did you raise any concern 9 not out of who was responsible but just out of -- 10 for the safety of the person in the car?	8 "Answer: Heiland. Cause I know Heiland. 9 "Question: You know Heiland.
11 MR. HARDIN: Objection. Asked and 12 answered.	10 "Answer: Like I said, we went to the 11 academy together.
13 You may answer.	12 "Question: You said, 'This looks fucked 13 up.'"
14 A. That was the whole reasoning of me talking 15 to the Golf Manor officers, you know, to bring it to 16 their attention.	14 Answer: That's exactly, "exactly what I 15 said. And uh he was just shaking his head. And I 16 said, 'You know this guy?' He said, 'No.' I was 17 like oh, 'Okay.' I said uh, 'Can he breathe?' I 18 said, 'It don't like he can' -- "he can from the 19 way he's laying.' And then uh he was just, he just 20 shook, he just shook his head. And uh then I said 21 that" -- "And uh then I said that because he was in 22 the car."
17 Q. When -- when you said it doesn't look -- 18 he doesn't look like he can breathe?	23 Did I read that accurately?
19 A. Well, yeah, I'm saying, period, from when 20 I looked in.	24 A. Yeah, pretty much, that I can recall.
21 MR. HARDIN: Objection to the form of the 22 question. I -- I am going to object to you 23 stating something that this witness did not 24 say, in the question.	

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1 Q. Okay. And that's -- and that's -- that is 2 consistent with your recollection?	1 A. Yes.
3 MR. HARDIN: For the record, before -- 4 before this, I'm -- I'm going to indicate to 5 you that I am not aware of the actual accuracy 6 of this transcript. I have reason to doubt the 7 accuracy of transcripts from the Cincinnati 8 Police Division, so I'm going to register that 9 objection and let him answer the question, 10 though.	2 Q. And then as to the other statements that 3 this transcript says you said, "Can he breathe? I 4 said," I don't -- "It don't look like he can from 5 the way he's laying," do you have a recollection of 6 saying that to Officer Heiland?
11 MR. MARTINS: Okay. Do you have any 12 indication that what I've read is inaccurate as 13 to what was said?	7 A. That sounds accurate.
14 A. Some wording.	8 Q. All right.
15 Q. No, I'm asking Counsel on the objection.	9 MR. HARDIN: Are you finished with that --
16 A. Oh.	10 that examination about this statement?
17 MR. HARDIN: Mr. Martins, if I actually 18 knew that there was an inaccuracy, I'd tell 19 you.	11 MR. MARTINS: Yes. Yes.
20 MR. MARTINS: Okay.	12 MR. HARDIN: I'm -- I'm going to indicate 13 to you the only reason I objected is because I 14 think your question, as it was originally 15 posed, said that he said he cannot breathe, and 16 that is different than what he said in his 17 transcript. That's the reason the objection 18 was as to the form.
21 MR. HARDIN: I just have reason to doubt 22 the accuracy.	19 MR. MARTINS: Well, the -- the quote is, 20 "Can he breathe? It don't look like he can 21 from the way he's laying."
23 MR. MARTINS: All right, sir.	22 MR. HARDIN: I -- I understand that.
24 BY MR. MARTINS:	23 MR. MARTINS: Okay.
	24 MR. HARDIN: But he didn't say: he cannot
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1 Q. Now, you were saying?	1 breathe.
2 A. In the case where it says --	2 MR. MARTINS: All right.
3 MR. WEISENFELDER: What page?	3 MR. HARDIN: Okay.
4 THE WITNESS: I'm sorry. I think it's 3.	4 BY MR. MARTINS:
5 A. Okay. Where it -- right under where it	5 Q. After talking with Officer -- with
6 says, "What did you say" right in the middle where	6 Sergeant Browner, did you talk to anyone else?
7 you started at --	7 A. No.
8 Q. Yes?	8 Q. I'm sorry?
9 A. -- "I told 'em it looked fucked up," no, I	9 A. No, I didn't.
10 didn't say "it." I said "this."	10 Q. At the time you spoke with Sergeant
11 Q. "This looks fucked up?"	11 Browner, am I correct in understanding that you knew
12 A. Yes.	12 that there had been a physical altercation involving
13 Q. All right.	13 several Cincinnati police officers? Correct?
14 A. That's meaning the whole incident. I	14 A. Correct. I knew something went on, yes.
15 didn't say "he" or -- I'm sorry, or "it." I -- I	15 Q. You knew that there had been an officer
16 was talking about the situation as a whole.	16 needs assistance call, because that's how you went
17 Q. Anything else?	17 to that scene, correct?
18 A. No. That's it.	18 A. Correct.
19 Q. So with respect to -- and later on, I	19 Q. You saw blood on Jorg's sleeve, correct?
20 guess, he says -- further down there's a question	20 A. Correct.
21 that says, "You said, 'This looks fucked up.'" I	21 Q. And he had told you that it came from the
22 guess that's -- that's accurate, right?	22 guy that you saw in the back seat of the cruiser?
23 A. Okay.	23 A. Correct.
24 Q. Is that correct?	24 Q. You had seen some blood on Caton's sleeve,

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AFFIDAVIT

STATE OF OHIO : : SS
COUNTY OF HAMILTON : :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of BRIAN ANTHONY BRAZILE, deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

Wendy L. Welsh
Wendy L. Welsh, Court Reporter

Sworn to before me this 15 day of September, 2004.

Thomas M. Blasing
Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.